

Primary International Conventions and Major Domestic Legislation

Lacey Act Amendments of 1981 (P.L. 97-79, 95 Stat. 1073, 16 U.S.C. 3371-3378, approved November 16, 1981, and as amended by P.L. 100-653, 102 Stat. 3825, approved November 14, 1988, and P.L. 98-327, 98 Stat. 271, approved June 25, 1984) These amendments repealed the Black Bass Act and sections 43 and 44 of the Lacey Act of 1900 (18 U.S.C. 43- 44), replacing them with a single comprehensive statute.

Under this law, it is unlawful to import, export, sell, acquire, or purchase fish, wildlife or plants taken, possessed, transported, or sold: 1) in violation of U.S. or Indian law, or 2) in interstate or foreign commerce involving any fish, wildlife, or plants taken possessed or sold in violation of State or foreign law.

The law covers all fish and wildlife and their parts or products, and plants protected by the Convention on International Trade in Endangered Species and those protected by State law. Commercial guiding and outfitting are considered to be a sale under the provisions of the Act.

Felony criminal sanctions are provided for violations involving imports or exports, or violations of a commercial nature in which the value of the wildlife is in excess of \$350. A misdemeanor violation was established, with a fine of up to \$10,000 and imprisonment of up to 1 year, or both. Civil penalties up to \$10,000 were provided. However, the Criminal Fines Improvement Act of 1987 increased the fines under the Lacey Act for misdemeanors to a maximum of \$100,000 for individuals and \$200,000 for organizations. Maximum fines for felonies were increased to \$250,000 for individuals and \$500,000 for organizations.

Those enforcing the Act are authorized to carry firearms, make qualified warrantless arrests for felony and misdemeanor violations of any law of the U.S. when enforcing the Act, search and seize under Attorney General guidelines, issue subpoenas and warrants, inspect vessels, vehicles, aircraft, packages, crates, and containers on arrival in the United States from outside the United States or prior to departure from the United States.

As amended May 24, 1949, 18 U.S.C. 42 (63 Stat. 89, September 2, 1960; P.L. 86-702; 74 Stat. 753; and November 29, 1990, P.L. 101-646, 104 Stat. 4772) prohibits importation of wild vertebrates and other animals listed in the Act or declared by the Secretary of the Interior to be injurious to man or agriculture, wildlife resources, or otherwise, except under certain circumstances and pursuant to regulations.

Weeks-McLean Law (Migratory Bird Conservation Act 1913) The Weeks-McLean Law was designed to stop commercial market hunting and the illegal shipment of migratory birds from one state to another. The Act boldly proclaimed

that “All wild geese, wild swans, brant, wild ducks, snipe, plover, woodcock, rail, wild pigeons, and all other migratory game and insectivorous birds which in their northern and southern migrations pass through or do not remain permanently the entire year within the borders of any State or Territory, shall hereafter be deemed to be within the custody and protection of the Government of the United States, and shall not be destroyed or taken contrary to regulations hereinafter provided therefor.”

The Weeks-McLean Law rested on weak constitutional grounds, having been passed as a rider to an appropriation bill for the Department of Agriculture, and it was soon replaced by the Migratory Bird Treaty Act of 1918.

Migratory Bird Treaty with Canada 1916 (Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds; 39 Stat. 1702; TS 628), as amended -- This 1916 treaty adopted a uniform system of protection for certain species of birds which migrate between the United States and Canada, in order to assure the preservation of species either harmless or beneficial to man. It sets certain dates for closed seasons on migratory birds and prohibits hunting insectivorous birds, but allows killing of birds under permit when injurious to agriculture.

The Convention was signed at Washington, D.C., on August 16, 1916, and ratified by the United States on September 1, 1916, and by Great Britain on October 20, 1916. Documents of ratification were exchanged on December 7, 1916. Implementing legislation for the United States was accomplished by enactment of the Migratory Bird Treaty Act in 1918 (16 USC 703-711; 40 Stat. 755). Canada and the United States signed an agreement on January 30, 1979, to amend the treaty to allow subsistence hunting of waterfowl outside of the normal hunting season, but it was never ratified by the Senate and never took effect. The treaty was amended in 1995 to establish a legal framework for the subsistence take of birds in Alaska and northern Canada by Alaska Natives and Aboriginal people in Canada. The Senate provided its advice and consent to the amendments in November, 1997. The treaty was formally implemented in 1999.

Migratory Bird Treaty Act 1918 (16 U.S.C. 703-712; Ch. 128; July 13, 1918; 40 Stat. 755) as amended by:

Chapter 634; June 20, 1936; 49 Stat. 1556; P.L. 86-732; September 8, 1960; 74 Stat. 866; P.L. 90-578; October 17, 1968; 82 Stat. 1118; P.L. 91-135; December 5, 1969; 83 Stat. 282; P.L. 93-300; June 1, 1974; 88 Stat. 190; P.L. 95-616; November 8, 1978; 92 Stat. 3111; P.L. 99-645; November 10, 1986; 100 Stat. 3590 and P.L. 105-312; October 30, 1998; 112 Stat. 2956

The original 1918 statute implemented the 1916 Convention between the U.S. and Great Britain (for Canada) for the protection of migratory birds. Specific provisions in the statute include:

Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3951-3956) Title III of P.L. 101-646 (16 U.S.C. 3951 et seq.; 104 Stat. 4779; enacted November 29, 1990) engages the Service in interagency wetlands restoration and conservation planning in Louisiana. It also expands the administration of Federal grants to acquire, restore, and enhance wetlands of coastal States and the Trust Territories. It authorizes the Director of the Fish and Wildlife Service to participate in the development of a Louisiana coastal wetlands restoration program, participate in the development and oversight of a coastal wetlands conservation program, and lead in the implementation and administration of a National coastal wetlands grant program.

The Act established a Federal Task Force to develop a comprehensive approach to restore and prevent the loss of coastal Louisiana wetlands. The Task Force was required to identify and prepare a list of coastal wetlands projects in Louisiana, determine priority coastal wetland restoration projects which could be completed within a 5-year period, and to develop a long-term wetland restoration plan. Within 3 years of completion of the wetland restoration plan, and every 3 years thereafter, the Task Force is required to report to Congress on the scientific effectiveness of the restoration program. The Service, together with EPA and the Corps, is required to report to Congress at specific intervals regarding the status and effectiveness of the plan.

Parallel authority is granted to the Corps of Engineers, EPA, and the Service to work with the State of Louisiana to develop, review, approve and evaluate the State's Coastal Wetlands Conservation Plan. This Plan is to achieve a goal of "no net loss of wetlands" in coastal Louisiana through a combination of regulatory and nonregulatory measures.

The law also requires the Corps of Engineers to allocate funds among Task Force members in accordance with the priorities set forth in the list. Authorizes Federal share of 75 percent of project costs, unless the State has an approved Coastal Wetlands Conservation Plan in which case the amount authorized is 85 percent of project costs.

The Director of the Service is assigned the lead role in implementing a national 50/50 matching grant program to fund wetland conservation projects in coastal states, except Louisiana. Federal match funds, up to 75 percent of project costs, will be available to States with established trust funds. Specific criteria are included in the Act to prioritize grant awards.

North American Wetlands Conservation - An allocation of 15 percent of the available appropriations in each fiscal year is to be provided to the Secretary of the Interior for wetlands conservation projects authorized by the North American Wetlands Conservation Act in coastal States.

Federal Aid in Sport Fish Restoration Act (16 U.S.C. 77c), authorizes the Secretary of the Interior to distribute 18 per centum of each annual appropriation made in accordance with that Act for the Coastal Wetlands Planning, Protection, and Restoration Act. Funds were authorized through fiscal year 1999. Funds are to be distributed such that 70 percent (not to exceed \$70 million) is used to develop and implement Louisiana restoration and conservation plans; 15 percent (not to exceed \$15 million) for the National Coastal Wetlands Conservation Grant program, including \$2.5 million for Texas wetlands assessment; and 15 percent (not to exceed \$15 million) to conduct activities authorized by the North American Wetlands Conservation Act.

Title II of P.L. 102-212, enacted December 11, 1991, contained an amendment to the Act clarifying that dedicated recurring funds from designated sources will qualify a State for Federal matching grants under the same terms as a State trust fund.

Subsection (c) of P.L. 103-375 (Sec. 5, Oct. 19, 1994, 108 Stat. 3495), amended the Act to ensure that funds allocated to North American Wetlands Conservation Act are used for "coastal wetlands ecosystems" in the coastal states.

Wild Bird Conservation Act (Title I of P.L. 102-440, signed October 23, 1992 (106 Stat. 2224)) established a new Federal system to limit or prohibit U.S. imports of exotic bird species. It imposes an immediate moratorium on the importation of certain exotic bird species identified by the CITES, and provides procedures for the Secretary to suspend trade in any CITES listed bird species and to remove trade suspensions on species. A list of exotic bird species for which trade is allowed is to be included in the Federal Register.

It provides criteria for the Secretary to determine whether exotic bird breeding facilities in other nations are "qualified" to be export species to the U.S. The trade in non-CITES species is to be periodically reviewed, and authorizes imposition of emergency moratoria or quotas if determined necessary for species conservation. Within a month of enactment (by November 23, 1992), the Secretary is directed to request from exporting nations information on their conservation programs for wild birds.

It establishes criteria for when the Secretary may issue permits (i.e. exemptions) for the importation of exotic birds and establishes guidelines for the assessment of civil penalties by the Secretary, and prescribes criminal penalties for violations of this law.

It establishes an Exotic Bird Conservation Fund and directs the Secretary to select for assistance, projects in countries of wild bird origin. Appropriations of up to \$5 million for each of Fiscal Years 1993 through 1995 are authorized. This authority is administered by the Assistant Director for International Affairs and the Assistant Director for Refuges and Wildlife.

Neotropical Migratory Bird Conservation Act (P.L. 106-247) This 2000 act provides grants to countries in Latin America and the Caribbean, and the United States for the conservation of neotropical migratory birds that winter south of the border and summer in North America. The law creates a competitive grants program to be administered by the Secretary of the Interior, through the Director of the Fish and Wildlife Service. The authorization of appropriations is \$5 million per year through 2003, with 3% or \$80,000, whichever is greater, allocated for administration. At least 75% of the funds must be spent outside of the United States and the non-federal match is 3 to 1. The law encourages habitat protection, education, researching, monitoring, and capacity building to provide for the long-term protection of neotropical migratory birds.

Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds. Signed January 10, 2001. The Division of Migratory Bird Management initiated the Executive Order in 1997 after an appellate court ruled that the MBTA was not applicable to Federal agencies. Although the U.S. Court of Appeals for the District of Columbia ruled on July 18, 2000, that Federal agencies are in fact subject to the MBTA, the Executive Order provides an effective mechanism for implementing the United States' obligations under its treaties with Canada, Mexico, Russia, and Japan. The Executive Order provides broad guidelines on conservation responsibilities and requires the development of more detailed guidance be developed in Memoranda of Understanding (MOU) with Federal agencies whose actions have, or are likely to have, a measurable negative effect on migratory bird populations. The MOUs identify positive actions that Federal agencies can apply to ensure their activities consider the conservation of migratory birds. The Executive Order builds upon the progress that has been made in recent years on conservation of migratory birds.

Partnerships for Wildlife Act (Title VII of Public Law 102-587, signed November 4, 1992 (16 U.S.C. 3741 et. seq.; 106 Stat. 5094)) establishes a Wildlife Conservation and Appreciation Fund, to receive appropriated funds and donations from the National Fish and Wildlife Foundation and other private sources to assist the State fish and game agencies in carrying out their responsibilities for conservation of nongame species. It authorizes grants to the States for programs and projects to conserve nongame species, with administrative requirements very similar to those contained in the Federal Aid Wildlife (Pittman-Robertson) and Sport Fish (Wallop-Breaux) Restoration programs. It also authorizes appropriations to match contributions from the Foundation.

Federal grants of appropriated funds are limited to \$250,000 per State annually, and requires at least 50 percent of the total amount provided from the Fund to any State to have been donated by the Foundation (making the funding formula no more than 1/3 Federal funds, at least 1/3 Foundation donations, and at least 1/3 State funds). The State share of funding is to be from non-Federal funds and not to be in-kind.

Conservation of Arctic Flora and Fauna (CAFF) – A Working Group of the Arctic Council. Formally established in 1996, the Arctic Council is a regional intergovernmental forum for sustainable development, mandated to address all three of its main pillars: the environmental, social and economic. The Council is comprised of representatives from Canada, Denmark (including Greenland and the Faroe Islands), Finland, Iceland, Norway, the Russian Federation, Sweden and the United States. Indigenous populations are also represented on the Council. Environmental monitoring and assessment are a key element of the Arctic Council's agenda. The approach of the Council encourages continuous dialogue among scientists, policy planners, Arctic residents and political level decision-makers. The decision-making of the Council is heavily based on the scientific work done under the umbrella of the Council and also influenced by the traditional knowledge of indigenous peoples.

Conservation of Arctic Flora and Fauna (CAFF) is a distinct forum of Arctic professionals, indigenous peoples representatives, and observer countries and organizations, to discuss and address circumpolar Arctic conservation issues. As one of the Working Groups of the Arctic Council its primary role is to advise the Arctic governments (Canada, Denmark/Greenland, Finland, Iceland, Norway, Russia, Sweden and the United States) on conservation matters and sustainable use issues of international significance and common concern.

Since its inaugural meeting in Ottawa, Canada in 1992, the CAFF Working Group has sponsored a wide variety of projects, including circumpolar conservation strategies for murrelets (guillemots) and eiders, a circumpolar network of protected areas, documentation of traditional ecological knowledge, an assessment of the conservation value of sacred sites of indigenous peoples of northern Russia, the

circumpolar vegetation map, circumpolar expert networks for monitoring key species, an atlas of rare endemic vascular plants of the Arctic, an assessment of the conservation status of Arctic migratory birds, an assessment of climate change impacts in the circumpolar region, and development of integrated ecosystem management strategies in the Russian Arctic.

Executive Order 13112 Invasive Species The purpose of this Executive Order, signed on February 3, 1999, is to prevent the introduction of invasive species and provide for their control, as well as to minimize the economic, ecological, and human health impacts that invasive species cause.

Under this Executive Order Federal agencies whose actions may affect the status of invasive species shall: (1) identify such actions, (2) use relevant programs and authorities to prevent, control, monitor, and research such species, and (3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere. Federal agencies shall pursue these duties in consultation with the Invasive Species Council, consistent with the Invasive Species Management Plan. This order also establishes an Invasive Species Council, which will provide national leadership regarding invasive species. The Council shall oversee the implementation of this order and see that the Federal agency activities concerning invasive species are coordinated, complementary, cost-efficient, effective, and rely on existing organizations already in place that address invasive species issues. Within 18 months after issuance of this order, the Council shall prepare and issue the first edition of a National Invasive Species Management Plan, which shall detail and recommend performance-oriented goals and objectives and specific measures of success for Federal agency efforts concerning invasive species.

Estuaries and Clean Waters Act of 2000 (P.L. 106-457) encourages the restoration of estuary habitat through more efficient project financing and enhanced coordination of Federal and non-Federal restoration programs. The Service plays a role through the estuary habitat restoration partnership component. The law creates a Federal interagency council that includes the Director of the Service, the Secretary of the Army for Civil Works, the Secretary of Agriculture, the Administrator of the Environmental Protection Agency and the Administrator for the National Oceanic and Atmospheric Administration. The Council is charged with developing a national estuary habitat restoration strategy and providing grants to entities to restore and protect estuary habitat to promote the strategy. The law authorizes \$40 million in FY2001, \$50 million in FY 2002 and 2003, \$60 million in FY 2004 and \$75 million in FY 2005 to support the grants program and requires no more than 65% of Federal funding for each project. The Secretary of the Army for Civil Works is the lead Federal agency where the authorization of appropriations originates, however, each Federal agency has an opportunity to chair the Council for a three-year term.